

Statement of Work Investment Business and Systems Vendor



Investments Division
April 20, 2017

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1.0 Introduction/Background

The Employees Retirement System of Texas (ERS) is a constitutional trust fund established as mandated by Article XVI, Section 67, Texas Constitution, and further organized pursuant to Subtitle B, Title 8, Texas Government Code, as well as 34 Texas Administrative Code, Sections 61.1, et seq. ERS administers a retirement and disability pension plan for state employees, law enforcement and custodial officers, elected state officials and two classes of judges (in this context, hereinafter referred to as Members). ERS invests state and Member contributions in the retirement trust funds and administers the trust funds with a fiduciary obligation to the members and retirees of ERS who are its beneficiaries.

The Fund is approximately \$25 billion and is invested in a diverse portfolio of assets, including U.S. and non-U.S. public equity, fixed income, real estate, hedge funds, infrastructure and private equity investments.

2.0 Scope of Work Summary

ERS Investments Division is soliciting proposals for a Vendor to review ERS' current investment business and technology processes in light of present and future investment management needs; benchmark this infrastructure against industry best practices; and, provide recommendations to address opportunities for enhancement. This SOW is not for a procurement as defined in Texas Govt Code 2254.

3.0 Qualifications

The Vendor should have significant experience working with investment management firms, including public sector organizations, with preference given to Vendors that have worked with comparable state agencies or retirement systems.

The successful Vendor will:

- Have at least 5 years of experience providing investment-related business management and technology consulting services to global diversified asset managers.
- Assign a project manager that has at least 3 years of experience providing investment-related business management and technology consulting services to global diversified asset managers.

ERS will work with the selected Vendor throughout the project. ERS staff will be available for specific assignments, regular deliverables, project review meetings and assistance.

4.0 Project Objectives and Phases

4.1 Preliminary Assessment

The Vendor shall conduct a preliminary assessment of ERS' current business and technology models and challenges associated with them. This assessment will require reviewing the key business needs for each major asset class, which includes a review of deployed technology systems and their capabilities/dependencies, strategic business direction for each asset class, and internal resources. Areas within the scope of each asset class include:

- 1) Portfolio Management
 - a) Analysis and modeling
 - b) Research and Due Diligence
- 2) Trading
- 3) Investment Risk Management & Attribution
 - a) Portfolio Level
 - b) Fund Level

- 4) Compliance
- 5) Performance Measurement and Attribution
 - a) Monthly and daily Fund, asset class, portfolio and analyst
- 6) Information Management
 - a) Data Acquisition and Integration
 - b) Business Intelligence
 - c) Data Warehousing
 - d) Reporting
- 7) Operations
 - a) Reconciliation
 - b) Cash flow management
 - c) Post trade settlement and processing
- 8) Investment Accounting
 - a) Position keeping
 - b) Reconciliation
 - c) NAV calculations

In conjunction with ERS, during the discovery phase, the Vendor conducts interviews with the ERS Project Team and other ERS staff as necessary.

Key Deliverables:

- a) Documentation of current technology with flowchart as well as written description of current business use of each system.
- b) Detailed description of the business needs of each major asset class.
- c) Document strategic direction and recommend options with benefits and identify any constraints.

4.2 Benchmarking Industry Standards and Design

Key Deliverables:

- a) Provide an analysis of industry best practices used by diversified asset managers, including conducting necessary primary and secondary research.
- b) Review ERS' current state, identifying areas that are in need of improvement, and discussing the degree of concern of each of these areas.
- c) Prepare a conceptual diagram of solution or solutions that meet ERS' business needs for overall structure and relationships between key business functions, processes, systems and the flow of data between them.
- d) Prepare a high-level description and diagram of key data sources, data storage and retention, and interfaces.

4.3 Recommendations and Implementation

Key Deliverables:

- a) Provide recommendations to address each of the areas identified as needing improvement in ERS' current state, including supporting arguments for the change and alternative options.
- b) Develop an implementation roadmap that phases-in changes over a reasonable period which is designed to help ensure a successful conversion. This roadmap should include estimated timeline and resource requirements.

- c) Provide a cost/benefit analysis for options and recommended improvements, including key or unique features for each of the suggested alternatives. Provide the benefits for each improvement (increase in efficiency, improved capabilities, increased organizational agility, reduced risk, etc.) and related key metrics to track and monitor.
- d) Provide at least 3 potential software providers.
- e) Provide any necessary assistance in drafting specifications for recommended systems or services that must be procured through the ERS' competitive process.

5.0 Other Key Deliverables

- 1) An on-site presentation to ERS staff of the findings, recommendations and other information outlined in the Project Objectives and Phases in Section 4.0. The presentation will take place at ERS' office in Austin, Texas at an agreed upon date.
- 2) A written draft report of the findings, recommendations and other information outlined in the Project Objectives and Phases in Section 4.0 to be provided to staff before the presentation required by this section.
- 3) Assistance in drafting software and services procurement specifications as needed. This will eliminate the Vendor from bidding on the software and services in a future solicitation.

6.0 Schedule/Milestones

The final acceptance of all deliverables resides with the ERS Chief Investment Officer ("CIO"). Once a project phase is completed and the Vendor provides the final report/presentation for review and approval, the CIO (or his designee) will either provide to the Vendor written acceptance of the deliverable(s) or provide written comments detailing the deficiencies of the deliverable(s) and provide recommendations that will make the deliverable(s) acceptable.

At a minimum, interviews as part of assessment work described in Section 4.1 shall be performed on site at ERS in Austin, Texas.

The Vendor will attend weekly teleconference project status meetings to assess project status and discuss issues that arise at times to be agreed upon between ERS and Vendor.

7.0 Proposal Process

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this SOW. Emphasis should be on completeness and clarity of content and cost effectiveness of the proposal. ERS reserves the right to withdraw this request if no acceptable proposals are received.

Submissions will be made by email to betty.martin@ers.state.tx.us by May 19, 2017 10:00 AM CST.

Proposal requirements must contain:

- 1. Description of Vendor's proposed approach to assessing ERS' strategic direction, key business requirements, business model and anticipated changes and evolution.
- 2. Description of Vendor's approach to understanding the current state of ERS' systems, internal resources, data, technology, business processes, current state and how various elements are connected.
- 3. Description of your approach to benchmarking.
- 4. Days to complete each phase and approximate number and type of ERS resources that will be needed during the engagement.

5. Three references for similar projects, preferably public funds with multi-asset class portfolios over \$5 billion.
6. Vendor qualifications (Section 8, #10)
7. Vendor representative information (Section 10)
8. Cost of proposal (Section 11)
9. Signed proposal (see page 7), with changes underlined

SOW schedule of events:

- April 28, 2017 10:00 AM – Deadline for questions. All questions must be submitted in writing to betty.martin@ers.state.tx.us.
- May 3, 2017 – Answers are sent to all Vendors
- May 19, 2017 10:00 AM – One copy of the Vendor proposal, along with all changes to the scope and deliverables referenced in this document underlined, must be received at the betty.martin@ers.state.tx.us email address. All submissions are in PDF format.
- Prior to July 31, 2017 a contract for Investment Systems and Vendor services will be signed and executed by ERS and the Vendor.
- All other dates to be governed by deliverables in section 5 and to be agreed upon before the commencement of services.

8.0 Other Requirements

1. ERS will make available authorized personnel during the project with a working knowledge of Investments architecture and applications. ERS staff will answer questions, clarify issues, and assist throughout the engagement.
2. ERS will provide a work area for Vendor to use during on-site activities that includes Internet and public phone access.
3. ERS will provide parking passes and adequate parking for the Vendor project team.
4. Standard hours of operation are 8 a.m. to 5 p.m. Central Time, Monday through Friday. Agreed-upon work windows will be discussed and subsequently documented via email.
5. ERS will provide Vendor with full access to the relevant functional, technical, and business resources with adequate skills and knowledge to support the performance of services.
6. ERS delays to provide Vendor the necessary data to accomplish each task may result in timeline changes.
7. The Vendor agrees that all work done under this SOW is a Work for Hire. The Vendor retains no rights to inventions, copyrights, or any other intellectual property developed solely for ERS during the course of this engagement.
8. The Vendor has no rights to ERS data and may not keep or use ERS data, project plans, or project results in future engagements.
9. The Vendor agrees to sign ERS' Non-Disclosure Agreement for the term of this engagement.
10. Vendor will provide names and professional qualifications for all persons assigned to perform the work at time of proposal submission.
11. All document deliverables must be in formats (hard copy and electronic) as requested by ERS - at a minimum, the formats must be in industry accepted standards (e.g., PDF, MS Word, MS PowerPoint, MS Excel)

9.0 Project Updates

ERS will receive a weekly project update on Tuesdays from the Vendor's Project Manager and a follow-up phone call will be scheduled to discuss the status and all pending items. The update will contain the following:

- Issues which need to be reviewed, in the following order:
 - Urgent - items marked as urgent will be reviewed by the appropriate responsible party and resolved or updated during the same day or by follow-up call.

- Normal – requires at most one week for resolution
- Issues pending ERS feedback will be assessed during the update phone call
- Change requests

Additionally, ERS will require a weekly standing meeting via conference call. The Vendor will provide:

- Formal agenda, and
- Task list / open items that include who is responsible and estimated completion dates.

10.0 Change Requests

ERS and the Vendor affirm they are fully committed to completing this project on time and within the established budget. All scope changes must be reviewed by both ERS and the Vendor as soon as possible, but at least by the next project update meeting. Vendor staff substitutions will require an approved change order. The following outlines the change request procedure:

1. ERS and the Vendor will discuss the change request and mutually agree on the scope of the change.
2. ERS and the Vendor's Project Manager (PM) will document the change.
3. The Vendor will determine the impact to the original schedule and cost impact, if any.
4. ERS and the Vendor make an addendum to the project scope documentation, milestone dates, and other required project artifacts.
5. The Vendor and ERS will sign the change notice that contains the information listed in steps 1-4 above.
6. ERS will execute the Purchase Order Change Notice to the purchase order (if any).
7. The duly authorized ERS representative who may approve change orders will be identified and provided to the Vendor. The ERS representative for the contract is:

Betty Martin
Betty.Martin@ers.state.tx.us
(512) 867-7272

The Vendor contact for the contract is:

(Name)
(Email)
(Phone)

All other terms within the original SOW, in addition to the signed addendum, will remain intact.

11.0 Fees

1. All prices shall be firm for one hundred eighty (180) days from SOW due date as well as any extensions associated with change orders.
2. All prices quoted for the entire SOW completion are on a firm, fixed price basis. The fixed fee proposed by Vendor must cover the cost incurred for all services described herein. Vendor shall not be paid any fees or earn any compensation in connection with the Contract except for the prices proposed.
3. Prices cannot increase during the term of the contract unless otherwise mutually agreed-upon as a written change order to the scope of work. Price reductions from list costs shall be equal to or less expensive than those discounts stated in the DIR contract.
4. ERS is a Texas governmental public trust fund and is, therefore, a tax-exempt governmental entity. Any fees to be paid by ERS in connection with the SOW should not include taxes of any kind, and should not be increased to compensate for the fact that ERS is tax exempt. Do not include tax in the response pricing. Tax Exemption Certificates will be furnished by ERS.
5. Work completed under this SOW is considered Work for Hire.

6. Travel, including meal and lodging, is not reimbursable.
7. Prompt payment of invoices will be based on the following:
 - a. Vendor must have an accounting point of contact available to ERS to answer any questions during the reconciliation process
 - b. Provided ERS can reconcile the invoice to supporting detail within seven (7) calendar days, ERS issues payment by the thirty-first (31st) day from the invoice received date. ERS does not accelerate payments in advance of due dates
 - c. Any disputes regarding payment will be resolved in accordance with Contract terms and Ch. 2251, Texas Government Code, pertaining to dispute of invoices
 - d. Vendor may submit its invoice to ERS by mail: P.O. Box 13207, Austin, Texas 78711-3207, or by email: ap@ers.state.tx.us.
8. Vendor may submit an invoice at the end of each phase. Invoices will not be processed and are considered incomplete unless ERS has accepted the work for the phase.

The price for all work products and deliverables listed in this SOW are:

Phase	Cost
Preliminary Assessment	\$67,673.91
Benchmarking Industry Standards and Design	\$70,652.17
Recommendations	\$102,369.57
RFP Assistance, if requested	\$39,391.30
Entire Project	\$257,680.00

12.0 Termination Date

This SOW is in effect until December 31, 2018

Acceptance

Accepted by:

Neos Consulting Group, LLC

Signature:



Print Name: Karon Irby

Title: President

Date: 6/28/2017

Accepted by:

Employees Retirement System of Texas

Signature:



Print Name: Porter Wilson

Title: Executive Director

Date: 6/29/2017

STATE OF TEXAS §
 §
 COUNTY OF TRAVIS §

**ADDENDUM TO AGREEMENTS BETWEEN
 THE EMPLOYEES RETIREMENT SYSTEM OF TEXAS
 AND NEOS CONSULTING GROUP, LLC.**

This Addendum ("**Addendum**") is by and between the Employees Retirement System of Texas ("**ERS**") and Neos Consulting Group LLC on behalf of itself and/or its officers, directors, employees, agents, assigns, resellers, distributors, subcontractors, independent contractors, subsidiaries, successors or other related parties (collectively, the "**Related Parties**") (together, hereinafter referred to as "**Neos**") related to certain products and services as provided herein.

Neos and the State of Texas, acting through the Department of Information Resources ("**DIR**"), are parties to that certain Contract for Deliverables-Based Information Technology, DIR Contract No. DIR-SSD-1974 (the "**DIR Contract**"). Neos is an approved provider of the services under the DIR Contract, and Neos is therefore subject to the terms of the DIR Contract. ERS desires certain services as indicated in the agreed upon Statement of Work ("**SOW**") to be provided by Neos under the DIR Contract, the term of which shall begin upon execution of this Addendum and terminate on December 31, 2018.

In consideration of the foregoing provisions and the terms and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Notwithstanding anything to the contrary contained in the DIR Contract (available at the DIR website), including the Standard Terms and Conditions for Product and Related Services Contracts, attached to the DIR Contract as Appendix A, the parties hereby agree as follows:
 - (a) This Addendum and any attachment hereto may only be modified by mutual agreement of the parties. Neos shall provide to ERS a copy of any other agreement not already attached or referenced in this Addendum that it may consider applicable to the Services for review and, if necessary, modification by mutual agreement prior to ERS' agreement thereto.
 - (b) The DIR Contract and the terms and conditions thereof are hereby incorporated by reference in this Addendum in their entirety, except as modified by this Addendum.
 - (c) ERS hereby reserves and does not waive its sovereign immunity, and acceptance of benefits by ERS under a contract does not waive its immunity from suit or immunity from liability.
 - (d) Capitalized terms used in this Addendum and not otherwise defined will have the meanings set forth in the DIR Contract.

- (e) Pursuant to Section 815.103(e) of the Texas Government Code, Subchapter C of Chapter 2260 of the Texas Government Code (Contested Case Hearing) does not apply to ERS and, for this reason, any references implying applicability of such dispute resolution proceedings shall not apply to ERS. Instead, only the process at Subchapter B of Chapter 2260 (Negotiation of Claim) should apply in these instances.
 - (f) Any press release, publicity or advertising regarding ERS' use of the Products, status as a Neos customer, or the like, including, but not limited to, use of ERS' name, logos or trademarks on Neos's website or marketing materials, must be preceded by written approval of ERS.
2. The Contractual Agreement ("Contract") between the parties is solely made up of the below-listed components. Each of the parties warrants and represents that the Contract and the documents identified herein constitute a valid and binding agreement enforceable against each party in accordance with its terms. The parties acknowledge and agree that in the event of any inherent or implied conflict among the Contract and any component parts thereof then the following shall be the order of priority of the documents described herein, with the first document in the list being the ultimate authority to the extent necessary to resolve any conflicts, ambiguities or inconsistencies between them, and then descending down the list that follows, but silence on any matter in a higher order document shall not negate, change, avoid, modify, or prevail over the provisions of a lower order document as to that matter:
- a. The DIR Contract, as amended by this Addendum;
 - b. The SOW; and
 - c. ERS' Special Terms and Conditions for the Purchase of Goods or Services ("Attachment A").

ERS and Neos agree that this Addendum shall survive the termination or expiration of any agreement between the parties.

[SIGNATURE PAGE TO FOLLOW.]


IN WITNESS WHEREOF, the duly authorized parties have entered into this Addendum to be fully effective upon execution by an authorized representative of ERS as set forth below.

AGREED AND ACCEPTED:

**EMPLOYEES RETIREMENT SYSTEM
OF TEXAS**

NEOS CONSULTING GROUP, LLC

By: 
Name: Porter Wilson
Title: Executive Director
Date: 6/29/2017

*By: 
Name: Karen Irby
Title: President
Date: 6/22/17

*Signature must be notarized.

STATE OF Texas §
COUNTY OF Travis §

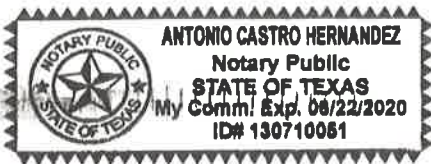
This instrument was subscribed, sworn to, and acknowledged before me on June
22, 2017, by Karen Irby, President of Neos Consulting Group, LLC.

Signature of Notary: 

Printed Name of Notary: Antonio Castro Hernandez

Notary Public in and for the State of Texas

My Commission expires: 06/22/2020



SOW ID #ERS-000007

Hershel Becker

Hershel Becker

Chief Procurement Officer

Texas Department of Information Resources

Date: 7/3/2017 1:49 PM CDT

Exhibit "A"
Employees Retirement System of Texas (ERS)
Special Terms and Conditions for the Purchase of Goods or Services

1. General provisions

- 1.1 If applicable to the service, ERS recommends that Contractor visit the site and examine the spaces and/or equipment to be serviced or installed. Contractor shall carefully examine these specifications and, if necessary, secure additional information from ERS that may be required to gain a clear and full understanding of the work.
- 1.2 All work by Contractor shall be performed between the hours of 8:00 a.m. and 5:00 p.m. on working days observed by ERS unless otherwise specified. Working days are usually Monday through Friday of each week. Deliveries, if any, shall be made to ERS' Receiving/Loading Dock between 8:00 a.m. and 4:00 p.m. during ERS' working days. The Loading Dock is closed from noon until 1:00 p.m. each day.
- 1.3 Contractor shall be responsible for damage to ERS' equipment, the workplace and/or its contents caused by Contractor's work, negligence in work, personnel, or equipment. Contractor shall be responsible and liable for the safety, injury, and health of its working personnel while performing service work.
- 1.4 Contractor shall provide all labor and equipment necessary to perform the service. Contractor's employees shall be no younger than 18 years of age and must be experienced in the type of work to be performed. No visitors, wives, husbands, children or other relatives or friends of Contractor's employees will be allowed on state or ERS property during working hours, unless they are bona fide employees of Contractor.
- 1.5 Contractor shall have a minimum of one English-speaking employee on duty while performing service work. All employees shall be well-groomed and appropriately dressed while performing service work.
- 1.6 ERS is committed to maintaining an alcohol-free, drug-free and smoke-free workplace. ERS prohibits Contractor's employees from possession, use, or being under the influence of alcohol or controlled substances while performing the service work. Violation of these prohibitions is grounds for termination of the service work. Contractor's employees are prohibited from using any tobacco products on ERS' premises.
- 1.7 ERS intends to purchase goods, equipment and services having the least adverse environmental impact within the constraints of its purchasing requirements, departmental need, availability and sound economic considerations. ERS encourages suggested changes and environmental enhancements for possible inclusion in the future.
- 1.8 If products and/or materials are used in the performance of the service work, Contractor shall purchase Texas products and/or materials when they are available at a comparable price, quality and delivery schedule.

2. Competence of Contractor

- 2.1 Contractor warrants and represents that personnel who have the proper education, training and experience to perform the requirements of the Purchase Order will be the only persons to perform the services under the Purchase Order, and Contractor shall be responsible for all performance required in accordance with the Purchase Order. Contractor shall obtain all licenses and/or permits required for the performance of the service.
- 2.2 Contractor warrants and represents that neither Contractor nor any of its Agents, as defined herein, to be assigned to perform any of the services hereunder, has been convicted of a felony criminal offense, or to Contractor's knowledge arrested for committing a felony criminal offense, and that if such a conviction or arrest occurs during the term of the Purchase Order, Contractor will immediately advise ERS as to the applicable facts and circumstances.
- 2.3 Contractor warrants and represents that it shall perform its obligations and duties under the Purchase Order with utmost good faith, loyalty, candor and skill.
- 2.4 Contractor warrants and represents that it has full title, right, power and authority to enter into the Purchase Order and perform its obligations thereunder. Contractor further warrants and represents that the goods (if any) sold to ERS under the Purchase Order will be new, of merchantable quality and fit for the particular purposes for which they are purchased. To the extent the goods are, or contain, hardware, software, and/or firmware products, such goods will perform according to licensor's documentation and be free from viruses and other sources of network corruption. Contractor warrants and represents that goods or services provided to ERS under the Purchase Order: (i) are in strict accordance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by ERS; (ii) are free from all

defects in design, workmanship and materials; (iii) are manufactured, developed or performed in a good and workmanlike manner in accordance with generally recognized industry standards for similar goods or services; (iv) are delivered free and clear of all liens, security interests or other encumbrances; and (v) do not and will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.

2.5 Inspection, test, acceptance or use of the goods or services furnished under the Purchase Order shall not affect the Contractor's obligations under the warranty above, and such warranties and representations shall survive inspection, test, acceptance and use. Contractor agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to ERS, when notified of such nonconformity by ERS. In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, ERS, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by ERS in doing so. The warranties and representations expressed herein will be in addition to and construed as consistent and cumulative with each other and with all warranties provided, express or implied, by law or equity.

2.6 This entire Section shall survive any termination, expiration, renewal, extension or amendment of the Purchase Order.

3. **Subcontracting**

Contractor shall not subcontract any of its obligations or responsibilities under the Purchase Order without ERS' prior written consent. Contractor warrants and represents that in selecting subcontractors to provide services in connection with the Purchase Order, Contractor has exercised reasonable due diligence to ensure that all of Contractor's representations and warranties in the Purchase Order pertaining to such subcontractors are true and correct, and that Contractor and each subcontractor has the commitment, capability, resources, security, and competence reasonably necessary to perform all services and obligations relating to the Purchase Order in a good and workmanlike manner in accordance with applicable professional standards and the standard of care required by the Purchase Order. Contractor further warrants and represents that it shall exercise the same reasonable due diligence in selecting any additional subcontractors, with ERS' prior written consent, who may perform future services relating to the Purchase Order. Contractor shall advise each of its past, present or future subcontractors that said subcontractors shall not be entitled to any benefits or consideration from ERS in connection with the Purchase Order. Furthermore, Contractor is solely responsible for all services required to be performed and for fulfillment of its obligations under the Purchase Order, and Contractor specifically assumes all liability for any and all such services provided by subcontractors, if any.

4. **Payment and Taxes**

4.1 ERS will remit payment to Contractor in accordance with one of the following methods, provided that ERS is satisfied with the goods or services provided by Contractor (applicable box is marked):

- ☐ Within 30 days of receipt of Contractor's correct invoice.
- ☐ On a monthly basis and within 30 days from receipt of Contractor's correct invoice.
- ☒ As otherwise stated in the specifications.

4.2 Payments will be made under the Texas Prompt Payment Law, § 2251.021, Tex. Gov't. Code Ann. The Purchase Order number shall be clearly shown on the outside of all packages, packing slips, and/or invoices submitted to ERS. Failure to follow this requirement may cause shipment(s) to be returned and/or payment(s) to be delayed.

4.3 The service shall be performed in accordance with the Purchase Order specifications to the satisfaction of ERS. ERS will resolve, in ERS' sole discretion, all questions that may arise as to the quality or acceptability of work performed, the manner of performance, the rate of progress of the work, and the interpretation of the Purchase Order specifications.

- 4.4 ERS is a Texas governmental public trust fund and is, therefore, a tax-exempt governmental entity. Any fees to be paid by ERS in connection herewith (including any quote, proposal or lease schedule related thereto) do not include taxes of any kind, and have not been, and will not be, increased to compensate for the fact that ERS is tax exempt. ERS does not agree to pay, and shall not pay, any taxes, including any property taxes of any kind whatsoever, on any lease, products or services related to the Purchase Order or any quote, proposal or lease schedule related thereto. Neither Contractor nor any affiliated entity, successor or assign of Contractor shall submit any invoice to ERS for payment or reimbursement of any taxes of any kind or nature, including any property taxes of any kind or nature.
- 4.5 Contractor shall be responsible for obtaining, paying and maintaining all insurance and payroll withholding obligations that may be required by state or federal law in its performance of the Purchase Order, including, but not limited to federal and state payroll taxes, income taxes, and workers' compensation insurance, if required. No employer or other responsibilities to such personnel are, or may be, assumed by ERS, its past, present or future officers or employees, its Board of Trustees, or the state of Texas.
- 4.6 Contractor warrants and represents that it has adequate financial capital and security to fulfill the requirements and responsibilities of the Purchase Order.
- 4.7 Under Tex. Gov't Code Ann. §§ 403.055, 2155.004 and .006, Contractor certifies that it is eligible to receive the Purchase Order, it acknowledges that the Purchase Order may be terminated and payment withheld if this certification is inaccurate, and in the event Contractor is indebted to ERS or the state of Texas or delinquent in paying any taxes owed to the state of Texas at the time the Purchase Order is entered into, Contractor agrees that any payment owed to Contractor under the Purchase Order shall first be applied towards such debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor warrants and represents that at the time it entered into the Purchase Order, Contractor was not indebted to ERS or the state of Texas or delinquent in paying any taxes owed the state of Texas.
- 4.8 In accordance with Texas Family Code Ann. § 231.006, (West 2014), relating to delinquent child support obligations, Contractor certifies that it is eligible to receive payments in connection with the Purchase Order and acknowledges that, in addition to other remedies available to ERS, the Purchase Order may be terminated immediately and any such payments withheld if this certification is inaccurate.

5. Renewal of Purchase Order

The Purchase Order may be renewed or extended for an additional period of time as agreed to by the parties, provided both parties agree in writing to do so prior to the expiration of the Purchase Order. The renewed Purchase Order shall be for the original price, terms and conditions, unless the parties otherwise agree in writing to change any such terms.

6. Termination

- 6.1 ERS may terminate the Purchase Order, without cause, by providing 30 days' written notice to Contractor. ERS will pay Contractor the prorated bid price for service actually performed and that is acceptable to ERS up to the date specified in the notice of termination. ERS may also terminate the Purchase Order for cause at any time. Termination under this paragraph shall not relieve Contractor of any obligation or liability that has occurred prior to termination.
- 6.2 ERS may terminate the Purchase Order, either in whole or in part, without cause, if funds for the Purchase Order are not approved by the Board of Trustees of the Employees Retirement System of Texas.

7. Abandonment, Default or Assignment

- 7.1 A Contractor who abandons or defaults on the work subject to a Purchase Order, violates any terms of the Purchase Order and/or causes ERS to purchase the goods or services elsewhere will not be considered in the re-advertisement of the goods or services and may not be considered in future bids for the same type of work unless the scope of work is significantly changed.
- 7.2 If Contractor violates any term of the Purchase Order or otherwise defaults on the work subject to a Purchase Order, ERS may cancel the Purchase Order without notice and may either rebid or reaward the Purchase Order to another Contractor. In addition, Contractor shall be liable to ERS for all damages associated with ERS' rebidding or reawarding the Purchase Order, including, but not limited to, ERS' internal costs and any increased costs in the goods, services and/or products purchased.
- 7.3 A Contractor may not sell or assign the Purchase Order without the prior written approval of ERS. A Contractor

must also provide ERS with written notification of company changes (including change in management, personnel, company name, address and telephone number) as soon as possible, but not later than 30 days from the date of change.

- 7.4 This entire Section shall survive any termination, expiration, renewal, extension or amendment of the Purchase Order.

8. Independent Contractor Status

Contractor and ERS understand and agree that Contractor is an independent contractor performing, providing, and delivering any and all goods and services under the Purchase Order. It is expressly understood and agreed by the parties hereto that personnel assigned by Contractor to perform or provide any of the services are employees of Contractor, and are not employees, agents, joint venturers, representatives or partners of ERS or the state of Texas for any purpose. Therefore, as an independent contractor, Contractor agrees that its employees are not eligible for or entitled to receive any retirement benefits as a member of the employee class pursuant to Tex. Gov't Code Ann. § 812.003 (West Supp. 2014), or any insurance benefits pursuant to Chapter 1551 of the Tex. Ins. Code Ann. (West Supp. 2014), or any other kind of benefit ordinarily provided by the state of Texas to its employees.

9. Compliance with Applicable Laws

- 9.1 Contractor warrants and represents that Contractor, its Agents, successors or any other person or entity shall comply with all federal, state, and local laws and regulations, and the orders of any court, administrative body, or tribunal in any matter affecting the performance of services under the Purchase Order. This requirement also includes Contractor's compliance with all laws and regulations concerning workers' compensation, minimum and maximum salary and wages, FLSA, IRS, ICE and licensing. Contractor shall furnish ERS with satisfactory proof of its compliance upon request.
- 9.2 Contractor shall immediately report to ERS any activity involving the loss, embezzlement, misappropriation or theft of any assets belonging to ERS or for which ERS is responsible. A report may be written or verbal, may be made by anyone having knowledge of the activity and should be made to ERS' General Counsel and Chief Compliance Officer.
- 9.3 The Purchase Order and the parties' performance of same and all matters in connection with the relationship of the parties shall be governed by and construed and performed in accordance and conformity with the laws of the state of Texas, without regard to conflicts of law provisions.
- 9.4 To the extent that federal or Texas state laws or regulations change or a change of circumstances require ERS to include additional language in its contracts, Contractor agrees to act in good faith and to cooperate in the execution of any Purchase Order amendment necessary to effectuate such change in federal or state law or regulation or a change of circumstances. In any situation where a question arises under the Purchase Order regarding the applicability of state or federal laws or regulations, then ERS' interpretation of the applicability of such law or rule shall control.
- 9.5 Immigration Reform. Contractor shall comply with the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986 who will perform any labor or services under the Purchase Order.
- 9.6 Civil Rights. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112), The Americans with Disabilities Act of 1990 (Public Law 101-336), Title 40, Part II of the Texas Administrative Code, and all amendments to each, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no person in the United States shall, on the grounds of race, color, national origin, sex, age, or disability, be denied any aid, care, service or other benefits provided by federal and/or state funding, or otherwise be subjected to discrimination.
- 9.7 Employment Verification. Contractor certifies and ensures that it utilizes, and will continue to utilize, for the term of this Purchase Order, the U.S. Department of Homeland Security's E-Verify system, or another similar system as approved by ERS, to determine the eligibility of: (1) All persons employed to perform duties within Texas, during the term of the Purchase Order; and (2) All persons (including subcontractors) assigned by Contractor to perform work pursuant to the Purchase Order, within the United States of America. Contractor shall provide, if ERS determines that it should so request, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the

three most recent hires that match the criteria above, by Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If Contractor does not utilize the E-verify system, the Contractor shall provide (at Contractor's own expense) to ERS, if ERS determines that it should so request, another form of eligibility verification for the three most recent hires of Contractor and Contractor's subcontractors. If this certification is falsely made, the Purchase Order may be immediately terminated, at the discretion of ERS and at no fault to ERS, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that ERS must undertake to replace the terminated Purchase Order, if applicable.

- 9.8 Subject to and without waiving ERS' or the state of Texas' sovereign or official immunity and pursuant to Tex. Gov't Code Ann. § 811.010 (West 2012), ERS and Contractor agree and consent to Austin, Travis County, Texas as the proper venue for any court proceedings between the parties, and that a Texas state court sitting in Austin, Travis County, Texas shall have jurisdiction over Contractor in connection with any action or proceeding arising out of, in connection with or related to the Purchase Order or the parties' relationship. ERS does not agree to engage in arbitration and does not waive its right to jury trial.
- 9.9 The parties further agree that ERS' exercise of any legal, regulatory, equitable or contractual remedies in connection with the Purchase Order shall not constitute a waiver of the immunities identified herein.
- 9.10 Vendor represents and warrants that there are no facts or circumstances that could give rise to a conflict of interest or the appearance thereof by entering into this Purchase Order or performing services hereunder.
- 9.11 This entire Section shall survive any termination, expiration, renewal, extension or amendment of the Purchase Order.

10. Sovereign Immunity

- 10.1 The parties agree and acknowledge that nothing contained in the Purchase Order, or in any amendment, extension or renewal thereof, is intended to nor will it have the effect of waiving the sovereign or official immunity of ERS, its past, present or future trustees, officers, employees and agents, or of the state of Texas, its past, present or future officers, employees, agents, or its departments, or agencies, nor does ERS' acceptance of any services, benefits, supplies or products under the Purchase Order constitute any waiver, express, implied or otherwise, of the sovereign or official immunity to suit or liability of ERS, its trustees, officers, agents or employees or of the state of Texas. As described herein, ERS' sovereign immunity includes, but is not limited to, all immunities, privileges, defenses, rights or actions available to ERS and its employees, trustees, and directors based on ERS' sovereign status and such protections to which it may be entitled as an agency of the state of Texas under Texas law (by comity or otherwise) and under the Eleventh Amendment to the Constitution of the United States of America. The parties further agree that ERS' exercise of any legal, regulatory, equitable or contractual remedies in connection with the Purchase Order shall not constitute a waiver of the immunities identified herein.
- 10.2 This entire Section shall survive any termination, expiration, renewal, extension or amendment of the Purchase Order.

11. Indemnification

- 11.1 In addition to any requirements elsewhere in the Purchase Order, Contractor shall defend, indemnify, save and hold harmless ERS, its past, present and future officers, directors, trustees, and employees, and the state of Texas and its past, present and future officers and employees ("*Indemnified parties*") from any and all claims, damages, losses, causes of action of whatever kind or nature, expenses, judgments, or any other amounts, including, but not limited to, reasonable attorneys' and experts' fees and costs, arising from or related to any wrongful and/or negligent acts or omissions of Contractor and/or Contractor's subsidiaries, affiliates, employees, officers, directors, representatives, principals, agents, independent contractors and subcontractors (hereinafter "*Agents*") arising or resulting from, in connection with, or related to their acts or omissions under the Purchase Order.
- 11.2 This indemnification will not apply to any judgment or award if the court or agency making the award determines that the liability underlying the judgment or award was caused solely by the gross negligence, fraud, or criminal misconduct of ERS, its officers, trustees, employees, representatives or agents. ERS does not agree to indemnify Contractor for any liability or costs incurred by Contractor for any reason.
- 11.3 ERS agrees to provide Contractor with reasonable notice of any claim or cause of action of which it has knowledge and which ERS reasonably believes may be subject to this indemnification provision.

11.4 Contractor acknowledges that the Attorney General of the state of Texas represents ERS in all litigation and agrees that the Texas Attorney General's office may participate in any defense of ERS, and any entry of judgment or settlement will be entered into in consultation with the Texas Attorney General's office.

11.5 This entire Section shall survive any termination, expiration, renewal, extension or amendment of the Purchase Order.

12. Negligence and Insurance Requirements

12.1 In addition to and cumulative of any and all remedies available to ERS at law, equity or under the Purchase Order, Contractor shall repair, replace or reimburse ERS for any and all real and/or personal property located within the premises of ERS that is damaged or stolen due to the negligence, omission or intentional wrongdoing by Contractor, its Agents, successors or any other person or entity. Repair, replacement, or financial reimbursement will be at the option and approval of ERS. ERS may withhold payment to Contractor for goods or services under the Purchase Order until the situation is resolved to the satisfaction of ERS.

12.2 Contractor shall maintain, during the term of the Purchase Order and any amendment, renewal or extension thereof, fidelity and/or liability insurance coverage with limits in excess of the amount necessary to cover it for the project made the basis of the Purchase Order. Prior to beginning performance under the Purchase Order, Contractor shall provide ERS with its certificate of insurance showing that Contractor has the necessary insurance coverage. Evidence that such coverage is being maintained during the primary term or any renewal of the Purchase Order shall be furnished to ERS upon the anniversary date of the policies and otherwise promptly upon ERS' request. Such insurance coverage shall be in addition to Contractor's indemnification obligations as provided herein. ERS shall be included as an Additional Insured by Endorsement to Contractor's insurance policies.

13. Cumulation of Remedies

13.1 All remedies available to ERS for Contractor's breach or anticipatory breach of the Purchase Order are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Liquidated damages, actual damages, cost projections, injunctive relief and/or Performance Guarantees may also be invoked either separately or combined with any other remedy in accordance with applicable law. Repudiation by Contractor of any provisions of the Purchase Order and any failure by Contractor to disclose information to ERS as required by the Purchase Order also constitute a breach of the Purchase Order.

13.2 This entire Section shall survive any termination, expiration, renewal, extension or amendment of the Purchase Order.

14. Record-Keeping/Audits

Contractor warrants and represents that it has and shall maintain the capability to adequately carry out any record-keeping and reporting requirements as set forth in the Purchase Order. ERS may audit Contractor's books and records pertaining to the service performed under the Purchase Order during Contractor's normal business hours.

15. Confidentiality

15.1 ERS is subject to the Texas Public Information Act, Tex. Gov't Code Ann. ch. 552 et seq. (West 2012 & Supp. 2014) (the "**PIA**"). Contractor is required to make any information pursuant to the Purchase Order, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public at no additional charge to ERS.

15.2 In connection with the Purchase Order, Contractor warrants and represents on behalf of itself and/or its employees, agents, assigns, subcontractors, independent contractors, successors or any other person or entity who may have access to information that is considered confidential, that such confidential information shall not be sold, assigned, provided, conveyed, released, disseminated, or otherwise disclosed by Contractor, its employees, agents, assigns, subcontractors, independent contractors, successors or any other person or entity without ERS' express written permission. Contractor warrants and represents that it shall instruct its employees, agents, assigns, subcontractors, independent contractors, successors or any other person or entity that they shall not so use or disclose such confidential information to any other person or entity without the express written permission of ERS, except as absolutely necessary for Contractor to provide the services or as required

by law. Contractor warrants and represents that it has a tested and proven system in effect to protect all confidential information as defined herein.

- 15.3 As used herein, "**confidential information**" includes the records of all members, annuitants, retirees, participants, alternate payees and beneficiaries in any program or retirement system administered by ERS and all other information provided or made available to Contractor by ERS, its third party administrators and carriers (as defined in Chapter 1551, Tex. Ins. Code) in connection with the Purchase Order. Confidential information also includes any and all "access devices," as that term is defined by § 552.136 of the PIA, and information relating to computer network security or to the design, operation, or defense of a computer network. These records are the exclusive property of ERS, and Contractor agrees that the confidential information shall be kept confidential as required by Tex. Gov't Code Ann. §§ 552.0038, 615.045, 815.503, and 840.402; Tex. Ins. Code 1551.063; and any and all other applicable Texas and federal law. This section survives any termination, renewal, or amendment of the Purchase Order.

16. Work for Hire

- 16.1 Contractor agrees that all Work Product produced or created as a result of the Purchase Order will be the sole and exclusive property of ERS. All right, title and interest in and to said property shall vest in ERS upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to the Purchase Order. To the extent that title to any such work may not, by operation of law, vest in ERS, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to ERS. ERS shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give ERS, as well as any person designated by ERS, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under the Purchase Order.
- 16.2 Contractor will not make, use, offer to sell, sell, lease, publish, reproduce, distribute, perform, or display, or otherwise prepare derivative works to, all or any portion of any Work Product produced or created as a result of any work performed or service provided by Contractor pursuant to the Purchase Order. "**Work Product**" is defined as any tangible or intangible items or things that have been or will be prepared, created, maintained, utilized, serviced or developed by Contractor (or such third parties as Contractor may be permitted to engage) at any time following the date of the Purchase Order, for or on behalf of ERS under the Purchase Order, including, but not limited to, any (a) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes, but is not limited to, documents, plans, forms, reports, analyses, and account information, databases, data, participant information, participant lists, or communications in any communication medium, written or otherwise, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (b) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (c) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (d) domain names, (e) copies, and similar or derivative works to any of the foregoing, (f) all documentation and materials related to any of the foregoing, (g) all other goods, services or deliverables to be provided to ERS under the Purchase Order, and (h) reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced, or generated in connection with the Purchase Order.
- 16.3 This entire Section shall survive any termination, expiration, renewal, extension or amendment of the Purchase Order.

17. Work Shall be Performed in the United States of America

Contractor warrants and represents that none of the services to be performed pursuant to the Purchase Order by Contractor (including, for the avoidance of doubt, any other entity) shall be outsourced or performed, nor shall any records or information made available to Contractor by ERS or any of its Members under this Contract be made available or accessible to or viewed by any person or entity (including any Agent of Contractor), in any fashion, at any location outside the fifty (50) states of the United States of America. Access to information for purposes of this requirement occurs whenever it is possible to view information or data covered by this

provision from outside the United States, whether or not the information or data is actually sent out of the United States or is capable of being viewed by someone outside the United States.

18. Disaster Recovery Plan

- 18.1 In the event the performance under the Purchase Order will involve the use of electronic equipment, then Contractor warrants and represents that it has a tested and proven written disaster recovery plan in place that provides for the recovery of Contractor's electronic data and data processing equipment which assures that the data processing system will be operational and such data will be accessible within twenty-four (24) hours after a natural disaster, or any other business interruption, whether natural or otherwise.
- 18.2 Contractor agrees to exercise reasonable care and prudence to provide all legally required and any other appropriate security measures for the purpose of preventing the transmission of viruses, worms, spyware, and/or Trojan horses, and for protecting ERS' information, confidential or otherwise, and for protecting ERS from losses caused by the alteration, damage or erasure of electronic data related to the Purchase Order.
- 18.3 Contractor further agrees to deliver, on an annual basis, a summary of its disaster recovery plan to ERS, and Contractor further agrees to be available for reasonable inquiry by ERS of the disaster recovery plan.
- 18.4 This entire Section shall survive any termination, expiration, renewal, extension or amendment of the Purchase Order.

[REVISED 4-8-2016]